In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 221

THE IOWA TRIBE OF THE IOWA RESERVATION IN OKLAHOMA, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The petitioners, Indian tribes, sued the United States under the Indian Claims Commission Act of 1946, 60 Stat. 1049, 25 U.S.C. 70a, for the appropriate restitution if the Treaties of August 4, 1824, 7 Stat. 229 and 231, were revised on the ground that the price provided therein for the cession of their lands to the United States was unconscionably low.

The tribes, on a theory of constructive trust,[1] sought to recover the difference between the price actually paid and the amount for which the United States sold the land some years later. The Commission and the Court of Claims found that the amount paid had been unconscionable but rejected petitioners' theory of damages and directed that they recover the difference between the price actually paid and the fair market value of the land at the time of the treaties. Because it found that the Commission had applied an erroneous principle for determining the area conveyed by the treaties,[2] the court remanded the case to the Commission, noting that if the area was changed on remand the per-acre value might also be changed.

The ruling of the Court of Claims on the issue of the measure of recovery is correct, and further review is not warranted.

The very authorities relied on by petitioners (Pet. 7-9) make clear that this is not a situation for the application of a constructive-trust measure of recovery. Such recovery is allowed where the defendant, taking advantage of a special relationship (for example, that of a guardian to his ward), has ob-

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[1] An alternative theory, which petitioners do not urge in this Court although it is mentioned in their Statement (Pet. 3), was that they should recover at the rate of at least $1.25 per acre. That was the prevailing minimum price, at the time, for sales of government land.

[2] This ruling we challenge in our petition for certiorari in *United States* v. *Sac and Fox Tribe of Indians of Oklahoma, et al.*, filed simultaneously herewith.

tained property by fraud or other misconduct. *E.g.*, 4 Pomeroy, *Equity Jurisprudence* (4th ed.), § 1053. Contrary to petitioners, the relationship of the United States and the Indian tribes cannot be likened to that of guardian and ward under private law. Both the Commission and the court below rejected this concept in reliance on long and unbroken authority (Pet. App. A, 5a-7a; Pet. App. B, 45a-48a).[3]

At all events, petitioners' claims must fail because there is no evidence, or indeed contention, that the United States obtained the lands in question from the Indians by improper means. Only the adequacy of the consideration is questioned; there is no suggestion that the cession was induced by trickery or other misconduct. Accordingly, there can be no basis for viewing the lands as having remained in the equitable ownership of the Indians after the treaties, so that a trust was impressed on the proceeds for their benefit. Since they parted with the lands voluntarily, they are entitled to no more than the fair value of the lands at the time of cession. This has always been the rule. *E.g.*, *Sioux Tribe of Indians* v. *United States*, 146 F. Supp. 229 (Ct. Cl.).

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[3] In addition to the cases cited, see *Skokomish Indian Tribe* v. *France*, 269 F. 2d 555, 560 (C.A. 9), ruling that, "in the absence of some specific language to that effect in the treaty, the legal obligations of a true guardianship do not prevail."

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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